Supreme Court, U.S.
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No. 96-2050

In the
Supreme Court of the United States
October Term, 1996

Stanley Pruet Jobe,

Petitioner,

vs.

United States of America,

Respondent.

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

Brief in Support of
Petition for Writ of Certiorari

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STATEMENT OF THE CASE

Respondent Fernando Novoa supports the petition for writ of certiorari filed by Stanley Jobe.

Novoa, a codefendant of Stanley Jobe in this case, was convicted of one count of conspiracy and one count of bank fraud. Novoa also filed a timely motion for new trial on the grounds that communications to one of the jurors prejudiced the jury, and the district court denied the motion.

ARGUMENT

As Jobe points out, the Fifth Circuit's decision to not hold a hearing with regard to the juror communication in this case conflicts with this Court's decision in *Remmer v. United States*, 347 U.S. 227 (1954). In a criminal case, any private communication with a juror about a matter pending before the jury is deemed presumptively prejudicial if not made pursuant to rules or to instructions of the court with full knowledge of the parties. *Id.* at 229. If such communication occurs, the government has the burden to prove, upon notice and hearing, that the communication was harmless. *Id.* In the subsequent case of *Smith v. Phillips*, 455 U.S. 209 (1982), this Court held that if the defendant offers evidence of juror partiality, the defendant is entitled to a hearing and an opportunity to prove the juror's actual bias.

The government does not dispute that the juror in this case received extrinsic evidence of a prior conviction for similar conduct by codefendant Billie Mac Jobe. Nor does the government dispute that the person who gave the juror the information had told the juror he would not be surprised that something improper had occurred in this case. This raised a presumption of prejudice.

Without the benefit of a hearing, the court of appeals decided that "the information relayed to [the juror] did not taint his deliberations." The district court reached similar conclusions without the benefit of additional testimony from the juror or others involved in the improper communication. Under *Remmer* neither court had the right to render such a decision without affording Novoa or Jobe a hearing.

As Jobe points out, the courts of appeals disagree on whether *Smith v. Phillips* shifted to the defendant the burden of showing prejudice. *Compare United States v. Pennell*, 737 F.2d 521 (6th Cir. 1984); *United States v. Walker*, 1 F.3d 423 (6th Cir. 1993) *with United States v. Littlefield*, 752 F.2d 1429 (9th Cir. 1985); *United States v. Butler*, 822 F.2d 1191 (D.C. Cir. 1987). *See also Stockton v. Virginia*, 852 F.2d 740, 744 (4th Cir. 1988). And, as Jobe points out, the Fifth Circuit itself appears confused in this regard, with the present panel apparently declining to follow past precedent in this area. Nevertheless, the apparent intercircuit conflict alone merits resolution by this court.

CONCLUSION

Novoa thus suggests that the court grant the petition, vacate the court of appeals' judgment, and remand the case to the court of appeals for reconsideration in light of *Remmer* and *Smith*. Alternatively, Novoa suggests that the Court grant the petition and give Novoa an opportunity to file a brief on the merits in support of the relief Jobe requests.

Respectfully submitted,

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